February 21, 2001

HOUSE BILL No. 1982

DIGEST OF HB 1982 (Updated February 20, 2001 4:08 PM - DI 96)

Citations Affected: IC 16-27; IC 22-4; IC 22-4.1.

Synopsis: Changes to unemployment compensation. Provides that unemployment benefits paid shall not be charged to the experience account of a base period employer in certain instances of property condemnation or destruction of the employer's property. Provides that, in certain circumstances, the commissioner of workforce development may adjust the estimated amount of contributions to be paid. Provides that, in certain circumstances, liability for repayment of benefits paid to an individual for any week may be waived. Authorizes hearings concerning unemployment compensation to be held by telephone. Modifies eligibility for unemployment compensation for home health care workers. Eliminates the 25% penalty of unemployment benefits when a claimant has been found to have voluntarily quit employment without good cause. Provides for an administrative penalty equivalent to 25% of the claimant's weekly benefit amount to be assessed for each week that a falsification or failure to disclose amounts earned during a week for which unemployment benefits are claimed occurred. Provides that unless an employing unit prevails in a civil action brought to collect money payments due to the commissioner of workforce development, the employing unit shall pay all costs incurred by the state in bringing the action. Makes various other changes to unemployment compensation.

Effective: July 1, 2001.

Stilwell

January 17, 2001, read first time and referred to Committee on Labor and Employment.
February 20, 2001, amended, reported — Do Pass.

February 21, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1982

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-4-11-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) For the purpose of charging employers' experience or reimbursable accounts with regular benefits paid subsequent to July 3, 1971, to any eligible individual but except as provided in IC 22-4-22 and subsection (f), such benefits paid shall be charged proportionately against the experience or reimbursable accounts of his employers in his base period (on the basis of total wage credits established in such base period) against whose accounts the maximum charges specified in this section shall not have been previously made. Such charges shall be made in the inverse chronological order in which the wage credits of such individuals were established. However, when an individual's claim has been computed for the purpose of determining his regular benefit rights, maximum regular benefit amount, and the proportion of such maximum amount to be charged to the experience or reimbursable accounts of respective chargeable employers in the base period, the experience or reimbursable account of any employer charged with

regular benefits paid shall not be credited or recredited with any portion of such maximum amount because of any portion of such individual's wage credits remaining uncharged at the expiration of his benefit period. The maximum so charged against the account of any employer shall not exceed twenty-eight percent (28%) of the total wage credits of such individual with each such employer with which wage credits were established during such individual's base period. Benefits paid under provisions of IC 22-4-22-3 in excess of the amount that the claimant would have been monetarily eligible for under other provisions of this article shall be paid from the fund and not charged to the experience account of any employer; however, this exception shall not apply to those employers electing to make payments in lieu of contributions who shall be charged for all benefit payments which are attributable to service in their employ. Irrespective of the twenty-eight percent (28%) maximum limitation provided for in this section, any extended benefits paid to an eligible individual based on service with a governmental entity of this state or its political subdivisions shall be charged to the experience or reimbursable accounts of the employers, and fifty percent (50%) of any extended benefits paid to an eligible individual shall be charged to the experience or reimbursable accounts of his employers in his base period, other than governmental entities of this state or its political subdivisions, in the same proportion and sequence as are provided in this section for regular benefits paid. Additional benefits paid under IC 22-4-12-4(c) shall:

(1) be paid from the fund; and

(2) not be charged to the experience account or the reimbursable account of any employer.

(b) If the aggregate of wages paid to an individual by two (2) or more employers during the same calendar quarter exceeds the maximum wage credits (as defined in IC 22-4-4-3) then the experience or reimbursable account of each such employer shall be charged in the ratio which the amount of wage credits from such employer bears to the total amount of wage credits during the base period.

(c) When wage records show that an individual has been employed by two (2) or more employers during the same calendar quarter of the base period but do not indicate both that such employment was consecutive and the order of sequence thereof, then and in such cases it shall be deemed that the employer with whom the individual established a plurality of wage credits in such calendar quarter is the most recent employer in such quarter and its experience or reimbursable account shall be first charged with benefits paid to such individual. The experience or reimbursable account of the employer

with whom the next highest amount of wage credits were established shall be charged secondly and the experience or reimbursable accounts of other employers during such quarters, if any, shall likewise be charged in order according to plurality of wage credits established by such individual.

(d) Except as provided in subsection (f), if an individual:

(1) voluntarily leaves an employer without good cause in connection with the work; or

(2) is discharged from an employer for just cause;

wage credits earned with the employer from whom the employee has separated under these conditions shall be used to compute the claimant's eligibility for benefits, but charges based on such wage credits shall be paid from the fund and not charged to the experience account of any employer. However, this exception shall not apply to those employers who elect to make payments in lieu of contributions, who shall be charged for all benefit payments which are attributable to service in their employ.

(e) Any nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in this article is not liable to make the payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in IC 22-4-4-4, nor is the experience account of any other employer liable for charges for benefits paid the individual to the extent that the unemployment compensation fund is reimbursed for these benefits pursuant to Section 121 of P.L.94-566. Payments which otherwise would have been chargeable to the reimbursable or contributing employers shall be charged to the fund.

(f) If an individual:

(1) earns wages during his base period through employment with two (2) or more employers concurrently;

(2) is ~~laid off~~ **separated** from work by one (1) of the employers **for reasons that would not result in disqualification under IC 22-4-15-1;** and

(3) continues to work for one (1) or more of the other employers after the end of the base period and continues to work during the applicable benefit year on substantially the same basis as during the base period;

wage credits earned with the base period employers shall be used to compute the claimant's eligibility for benefits, but charges based on the wage credits from the employer who continues to employ the individual shall be charged to the experience or reimbursable account of the

separating employer. ~~who laid the claimant off.~~

(g) Subsection (f) does not affect the eligibility of a claimant who otherwise qualifies for benefits nor the computation of his benefits.

(h) Unemployment benefits paid shall not be charged to the experience account of a base period employer when the claimant's unemployment from the employer was a direct result of the condemnation of property by a municipal corporation (as defined in IC 36-1-2-10), the state, or the federal government, a fire, a flood, or an act of nature, when at least fifty percent (50%) of the employer's employees, including the claimant, became unemployed as a result. This exception does not apply when the unemployment was an intentional result of the employer or a person acting on behalf of the employer.

SECTION 2. IC 22-4-11-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. **(a)** If the commissioner finds that any employer has failed to file any payroll report or has filed a report which the commissioner finds incorrect or insufficient, the commissioner shall make an estimate of the information required from the employer on the basis of the best evidence reasonably available to the commissioner at the time and notify the employer thereof by mail addressed to the employer's last known address. **Except as provided in subsection (b),** unless the employer files the report or a corrected or sufficient report, as the case may be, within fifteen (15) days after the mailing of the notice, the commissioner shall compute the employer's rate of contribution on the basis of the estimates, and the rate determined in this manner shall be subject to increase but not to reduction on the basis of subsequently ascertained information. **The estimated amount of contribution is considered prima facie correct.**

(b) The commissioner may adjust the amount of contribution estimated in this manner on the basis of information ascertained after the expiration of the notice period if the employer or other interested party:

(1) makes an affirmative showing of all facts alleged as a reasonable cause for the failure to timely file any payroll report; and

(2) submits accurate and reliable payroll reports.

SECTION 3. IC 22-4-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Any individual who makes, or causes to be made by another, a false statement or representation of a material fact knowing it to be false or knowingly fails, or causes another to fail, to disclose a material fact, and as a result

thereof has received any amount as benefits to which the individual is not entitled under this article, shall be liable to repay such amount to the commissioner for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the six (6) year period following the date of the filing of the claim or statement that resulted in the payment of such benefits, if the existence of such misrepresentation or nondisclosure has become final by virtue of an unappealed determination of a deputy, or a decision of an administrative law judge, or the review board, or by a court of competent jurisdiction.

(b) Any individual who, for any reason other than misrepresentation or nondisclosure as specified in subsection (a), has received any amount as benefits to which the individual is not entitled under this article or because of the subsequent receipt of income deductible from benefits which is allocable to the week or weeks for which such benefits were paid becomes not entitled to such benefits under this article shall be liable to repay such amount to the commissioner for the unemployment insurance benefit fund or to have such amount deducted from any benefits otherwise payable to the individual under this article, within the three (3) year period following the date of the filing of the claim or statement that resulted in the payment of such benefits, if the existence of such reason has become final by virtue of an unappealed determination of a deputy or a decision of an administrative law judge, or the review board, or by a court of competent jurisdiction.

(c) When benefits are paid to an individual who was eligible or qualified to receive such payments, but when such payments are made because of the failure of representatives or employees of the department to transmit or communicate to such individual notice of suitable work offered, through the department, to such individual by an employing unit, then and in such cases, the individual shall not be required to repay or refund amounts so received, but such payments shall be deemed to be benefits improperly paid.

(d) Where it is finally determined by a deputy, an administrative law judge, the review board, or a court of competent jurisdiction that an individual has received benefits to which the individual is not entitled under this article, the commissioner shall relieve the affected employer's experience account of any benefit charges directly resulting from such overpayment. However, an employer's experience account will not be relieved of the charges resulting from an overpayment of benefits which has been created by a retroactive payment by such employer directly or indirectly to the claimant for a period during which the claimant claimed and was paid benefits unless the employer

reports such payment by the end of the calendar quarter following the calendar quarter in which the payment was made or unless and until the overpayment has been collected. Those employers electing to make payments in lieu of contributions shall not have their account relieved as the result of any overpayment unless and until such overpayment has been repaid to the unemployment insurance benefit fund.

(e) Where any individual is liable to repay any amount to the commissioner for the unemployment insurance benefit fund for the restitution of benefits to which the individual is not entitled under this article, the amount due may be collectible without interest by civil action in the name of the state of Indiana, on relation of the department, which remedy by civil action shall be in addition to all other existing remedies and to the methods for collection provided in this section.

(f) Liability for repayment of benefits paid to an individual (other than an individual employed by an employer electing to make payments in lieu of contributions) for any week may be waived upon the request of the individual if:

(1) the benefits were received by the individual without fault of the individual;

(2) the benefits were the result of payments made during the pendency of an appeal before an administrative law judge or the review board under IC 22-4-17 under which the individual is determined to be ineligible for benefits; and

(3) repayment would be against equity and good conscience.

SECTION 4. IC 22-4-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) With respect to benefit periods established on and after July 6, 1980, an individual who has voluntarily left ~~his~~ **the individual's most recent** employment without good cause in connection with the work or who was discharged from ~~his~~ **the individual's most recent** employment for just cause is ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until ~~he~~ **the individual** has earned remuneration in employment equal to or exceeding the weekly benefit amount of ~~his~~ **the individual's** claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

~~(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of his current claim, as initially determined, shall be reduced by twenty-five percent (25%). If~~

~~twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. When twenty-five percent (25%) of the maximum benefit amount, as initially determined, exceeds the unpaid balance remaining in the claim, such reduction will be limited to the unpaid balance.~~

~~(c)~~ **(b)** The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from ~~his prior~~ **the individual's** employment if:

~~(A) he left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of betterment of wages or working conditions and thereafter was employed on said job for not less than ten (10) weeks;~~

~~(B)~~ **(A)** having been simultaneously employed by two (2) employers, ~~he~~ **the individual** leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

~~(C) he~~ **(B) the individual** left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left ~~his~~ **the individual's** work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, ~~he~~ **the individual** shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits

for any week because ~~he~~ **the individual** is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's ~~prior~~ employment if:

(A) the ~~prior~~ employment was outside the individual's labor market;

(B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and

(C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

~~(d)~~ **(c)** "Discharge for just cause" as used in this section is defined to include but not be limited to:

(1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;

(2) knowing violation of a reasonable and uniformly enforced rule of an employer;

(3) unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;

(4) damaging the employer's property through willful negligence;

(5) refusing to obey instructions;

(6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;

(7) conduct endangering safety of self or coworkers; or

(8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

SECTION 5. IC 22-4-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for waiting period or benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

(1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;

(2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service, or an employment unit; or

(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the

failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

~~(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction shall be raised to the next higher even dollar amount. When twenty-five percent (25%) of the maximum benefit amount, as initially determined, exceeds the unpaid balance remaining in the claim, such reduction shall be limited to the unpaid balance.~~

~~(e)~~ **(d)** In determining whether or not any such work is suitable for an individual, the department shall consider:

(1) the degree of risk involved to such individual's health, safety, and morals;

(2) the individual's physical fitness and prior training and experience;

(3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved.

~~(f)~~ **(e)** Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.

(2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.

(4) If as a condition of being employed the individual would be

required to discontinue training into which the individual had entered with the approval of the department.

~~(g)~~ **(f)** Notwithstanding subsection ~~(c),~~ **(d),** with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection ~~(c)~~ **(d).**

~~(h)~~ **(g)** With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (The Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

~~(i)~~ **(h)** The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection ~~(g))~~ **(f))** to which subsection ~~(h)~~ **(g)** would not apply.

SECTION 6. IC 22-4-15-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) An individual shall be ineligible for waiting period or benefit rights: For any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding his weekly benefit amount in

the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. This disqualification shall apply only if some or all of the benefits otherwise payable are chargeable to the experience or reimbursable account of such employer, or would have been chargeable except for the application of this chapter. For the purposes of this subdivision (2), federal old age, survivors and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than his weekly benefit amount an otherwise eligible individual shall not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

SECTION 7. IC 22-4-16-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. **(a)** Notwithstanding any other provisions of this article, if an individual knowingly fails to disclose amounts earned during any week in his waiting period, benefit period, or extended benefit period with respect to which benefit rights or extended benefit rights are claimed, or knowingly fails to disclose or has falsified as to any fact which would have disqualified him or rendered him ineligible for benefits or extended benefits or would have reduced his benefit rights or extended benefit rights during such a week, all of his wage credits established ~~prior to the week of~~ **during the weeks that** the falsification or failure to disclose ~~shall be cancelled~~ **occurred**, and any benefits or extended benefits which might otherwise have become payable to him and any benefit rights or extended benefit rights based upon those wage credits shall be forfeited.

(b) An administrative penalty equivalent to twenty-five percent (25%) of the claimant's weekly benefit amount shall be assessed for each week that the falsification or failure to disclose occurred.

SECTION 8. IC 22-4-17-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) When an individual files an initial claim, the ~~division~~ **department** shall promptly make a determination of his status as an insured worker in a form prescribed by the board. A written notice of the determination of insured status shall be furnished him promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within twenty (20) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. Such notice shall contain the date, the name and social security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within twenty (20) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the ~~division~~ **department** of such facts ~~promptly in accordance with regulations~~ **within ten (10) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form** prescribed by the board.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims waiting period credit or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in IC 22-4-17-3.

(e) In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for waiting period credit or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof. Except as otherwise hereinafter provided in this subsection regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within twenty (20) days after such notification was mailed to the claimant's or the employer's last known address, or otherwise delivered to the claimant or the employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. With respect to notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless such claimant or employer, within twenty-five (25) days after such notification was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. If such hearing is desired, the request therefor shall be filed with the commissioner in writing within the prescribed periods as above set forth in this subsection and shall be in such form as the board may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

(f) No person may participate on behalf of the department in any case in which the person is an interested party.

(g) Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

(h) Notice to the employer and the claimant that the determination of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant.

SECTION 9. IC 22-4-17-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. The commissioner shall appoint one (1) or more administrative law judges to hear and decide disputed claims. ~~Such administrative law judges shall be full-time salaried employees of the department.~~ Administrative law judges appointed under this section are not subject to IC 4-21.5 or any other statute regulating administrative law judges, unless specifically provided.

SECTION 10. IC 22-4-17-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8.5. An administrative law judge and the review board may hold a hearing under this chapter by telephone. ~~if any of the following conditions exist:~~

~~(1) The claimant or the employer is not located in Indiana.~~

~~(2) All of the following conditions exist:~~

~~(A) The claimant and the employer are located in Indiana.~~

~~(B) The claimant or the employer requests without objection that the hearing be held by telephone.~~

~~(C) The administrative law judge or the review board determines that the distance between the location of the claimant and the location of the employer is so great that a hearing held by telephone is justified under the circumstances.~~

~~(3) A party cannot appear in person because of an illness or injury to the party.~~

~~(4) In the case of a hearing before the review board, the issue to be adjudicated does not require both parties to be present.~~

~~(5) The unemployment insurance review board has determined that a hearing by telephone is proper and just.~~

SECTION 11. IC 22-4-31-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. **(a)** If, after due notice, any employing unit defaults in the payment of any contributions or other money payments required by this article, the amount due may be collected by civil action in the name of the state of Indiana on the relation of the commissioner. Such civil action is not to be considered as the exclusive method for collection of the contributions or money payments but is in addition to the method provided in IC 22-4-29-2 through IC 22-4-29-12 and is to be brought only in such cases as the board may deem advisable in the interest of necessity and convenience.

(b) Unless the employing unit prevails in a civil action brought under this chapter, the employing unit shall pay all costs, including reasonable attorney's fees, incurred by the state in bringing the action.

SECTION 12. IC 22-4.1-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) This section applies only to an employer who employs individuals within the state.

(b) As used in this section, "date of hire" is the first date that an employee provides labor or services to an employer.

(c) As used in this section, "employee":

(1) has the meaning set forth in Chapter 24 of the Internal Revenue Code of 1986; and

(2) includes any individual:

(A) required under Internal Revenue Service regulations to complete a federal form W-4; and

(B) who has provided services to an employer.

The term does not include an employee of a federal or state agency who performs intelligence or counter intelligence functions if the head of the agency determines that the reporting information required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

(d) As used in this section, "employer" has the meaning set forth in Section 3401(d) of the Internal Revenue Code of 1986. The term includes:

(1) governmental agencies and labor organizations; and

(2) a person doing business in the state as identified by:

(A) the person's federal employer identification number; or

(B) if applicable, the common paymaster, as defined in Section 3121 of the Internal Revenue Code or the payroll reporting agent of the employer, as described in IRS Rev. Proc. 70-6, 1970-1, C.B. 420.

(e) As used in this section, "labor organization" has the meaning set

forth in 42 U.S.C. 653A(a)(2)(B)(ii).

(f) The department shall maintain the Indiana directory of new hires as required under 42 U.S.C. 653A.

(g) The directory under subsection (f) must contain information that an employer must provide to the department for each newly hired employee as follows:

(1) The information must be transmitted within twenty (20) business days of the employee's date of hire.

(2) If an employer transmits reports under this section magnetically or electronically, the information must be transmitted in two (2) monthly transactions that are:

(A) not less than twelve (12) days apart; and

(B) not more than sixteen (16) days apart.

If mailed, the report is considered timely if it is postmarked on or before the due date. If the report is transmitted by facsimile machine or by using electronic or magnetic media, the report is considered timely if it is received on or before the due date.

(h) The employer shall provide the information required under this section on an employee's withholding allowance certificate (Internal Revenue Service form W-4) or, at the employer's option, an equivalent form. The report may be transmitted to the department by first class mail, by facsimile machine, electronically, or magnetically. The report must include at least the following:

(1) The name, address, and social security number of the employee.

(2) The name, address, and federal tax identification number of the employer.

(3) The date of hire of the employee.

(i) An employer that has employees in two (2) or more states and that transmits reports under this section electronically or magnetically may comply with this section by doing the following:

(1) Designating one (1) state to receive each report.

(2) Notifying the Secretary of the United States Department of Health and Human Services which state will receive the reports.

(3) Transmitting the reports to the agency in the designated state that is charged with receiving the reports.

(j) The department may impose a civil penalty of five hundred dollars ($500) on an employer that fails to comply with this section if the failure is a result of a conspiracy between the employer and the employee to:

(1) not provide the required report; or

(2) provide a false or an incomplete report.

(k) The information received from an employer regarding newly hired employees shall be:

(1) entered into the state's new hire directory within five (5) business days of receipt; and

(2) forwarded to the national directory of new hires within three

(3) business days after entry into the state's new hire directory.

The state shall use quality control standards established by the Administrators of the National Directory of New Hires.

(l) The information contained in the Indiana directory of new hires is available only for use by the department and the office of the secretary of family and social services for purposes required by 42 U.S.C. 653A, unless otherwise provided by law.

(m) The office of the secretary of family and social services shall reimburse the department for any costs incurred in carrying out this section.

(n) The office of the secretary of family and social services and the department shall enter into a purchase of service agreement that establishes procedures necessary to administer this section.

SECTION 13. IC 16-27-2-8 IS REPEALED [EFFECTIVE JULY 1, 2001].

COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1982, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, line 14, after "individual" insert "**(other than an individual employed by an employer electing to make payments in lieu of contributions)**".

Page 7, line 9, strike "(A)".

Page 7, line 9, delete "the individual".

Page 7, line 9, strike "left to accept with another employer".

Page 7, strike lines 10 through 13.

Page 7, line 14, strike "(B)" and insert "**(A)**".

Page 7, line 19, strike "(C)".

Page 7, line 19, after "he" insert "**(B)**".

Page 13, line 1, strike "division" and insert "**department**".

Page 13, line 14, reset in roman "twenty (20)".

Page 13, line 14, delete "ten (10)".

Page 13, line 29, reset in roman "twenty (20)".

Page 13, lines 29, delete "ten (10)".

Page 13, line 36, strike "division" and insert "**department**".

Page 13, line 37, strike "promptly in accordance with regulations" and insert "**within ten (10) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form**".

Page 14, line 13, reset in roman "twenty".

Page 14, line 14, reset in roman "(20)".

Page 14, line 14, delete "ten (10)".

Page 14, line 22, reset in roman "twenty-five (25)".

Page 14, line 22, delete "fifteen (15)".

Page 15, between lines 37 and 38, begin a new paragraph and insert:

"SECTION 11. IC 22-4-31-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. **(a)** If, after due notice, any employing unit defaults in the payment of any contributions or other money payments required by this article, the amount due may be collected by civil action in the name of the state of Indiana on the relation of the commissioner. Such civil action is not to be considered as the exclusive method for collection of the contributions or money payments but is in addition to the method provided in IC 22-4-29-2 through IC 22-4-29-12 and is to be brought only in such cases as the board may deem advisable in the interest of necessity and convenience.

(b) Unless the employing unit prevails in a civil action brought

under this chapter, the employing unit shall pay all costs, including reasonable attorney's fees, incurred by the state in bringing the action.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1982 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 10, nays 1.